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OCTOBER TERM, 1988

JOSE MARTINEZ HIGH.

Petitioner,

vs.

WALTER ZANT, WARDEN.

Respondent.

HEATH A. WILKINS.

Petitioner,

vs.

STATE OF MISSOURI

Respondent.

ON WRITS OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT
AND TO THE SUPREME COURT OF THE STATE OF MISSOURI

**BRIEF OF THE AMERICAN BAPTIST CHURCHES;
THE AMERICAN FRIENDS SERVICE COMMITTEE;
THE AMERICAN JEWISH COMMITTEE;
THE AMERICAN JEWISH CONGRESS;
THE CHRISTIAN CHURCH (DISCIPLES OF CHRIST);
THE MENNONITE CENTRAL COMMITTEE;
THE GENERAL CONFERENCE MENNONITE CHURCH;
THE NATIONAL COUNCIL OF CHURCHES;
JAMES E. ANDREWS AS STATED CLERK OF THE GENERAL
ASSEMBLY OF THE PRESBYTERIAN CHURCH (USA);
THE SOUTHERN CHRISTIAN LEADERSHIP CONFERENCE;
THE UNION OF AMERICAN HEBREW CONGREGATIONS;
THE UNITED CHURCH OF CHRIST COMMISSION FOR
RACIAL JUSTICE; THE UNITED METHODIST CHURCH
GENERAL BOARD OF CHURCH AND SOCIETY; AND
THE UNITED STATES CATHOLIC CONFERENCE
AS AMICI CURIAE IN SUPPORT OF PETITIONERS**

(For Appearances. See Reverse Side of Cover)

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STATEMENT OF INTEREST OF AMICI CURIAE

Amici listed and described below are national religious bodies, judicatories, or organizations of the Protestant, Catholic, and Jewish faiths.¹ Amici believe that whatever one may think of the imposition of capital punishment generally, and we oppose it, the notion of executing children shocks the conscience. While Amici endorse many of the arguments presented in petitioners' and in the other amicus briefs, we present herein additional arguments distinctive to our own interests. Amici are interested in the issue before the Court because of:

(1) a conviction that children are uniquely redeemable and rehabilitatable,

¹ Amici file this brief in support of petitioners by written consent of all parties pursuant to rule 36.2 of the Rules of the Court. The parties' letters of consent are on file with the Clerk of the Court.

they are capable of rapid and profound positive change, and their capacity for growth is the primary factor to be considered by society in assessing punishment for their antisocial acts;

(2) a conviction that since children have not fully achieved that degree of maturation which society requires of them before designating them "adults," and since their actions involve a lesser culpability than similar actions by adults, a lesser degree of punishment should be imposed for them than for adults who commit similar acts;

(3) a fundamental conviction that protection, nurture, education, moral development, and preparation of children for responsible adulthood is the most important task appropriately chosen by those responsible for children's care;

(4) a common and traditional

calling to be intimately involved with society in positive ways so as to discover and advance the "evolving standards of decency that mark the progress of a maturing society," Trop v. Dulles, 356 U.S. 86, 101 (1958), and to help ensure that the criminal justice system reflects those standards;

(5) a recognition that it is Amici's responsibility when the Court explores the national consensus regarding the legal and moral decency of executing children, to provide the Court with the religious community's collective experiences with adolescents, which counsels against their execution;

(6) united opposition to the imposition of capital punishment because it is cruel and unusual and because capital punishment as it is applied in the United States is contrary to the

highest -- and even the simplest -- moral teachings of our traditions; and

(7) Amici's remorse that execution of children -- the casting out of those most dependent upon society's care-- ignores, distorts, and corrupts law's basic inclination toward justice.

Amici are:

1. THE AMERICAN BAPTIST CHURCHES IN THE U.S.A. (NATIONAL MINISTRIES) consists of 5,800 churches with a membership of 1.6 million.² The American Baptist Churches are deeply concerned with the moral, spiritual and emotional growth of children, who occupy a very special place in our ministry. In addition, in 1958 and 1966, the American Baptist

² Membership numbers are approximate and have been either provided by the respective amicus from current records or taken from C. H. Jacquet, Jr., ed., The Yearbook of American & Canadian Churches: 1987 (New York: Abingdon Press, 1987).

Convention, a representative body of the Church, adopted a resolution, subsequently affirmed by the American Baptist Churches in 1980 and 1982, calling for the abolition of capital punishment, in part based on the conviction that "the emphasis in penology should be upon the process of creative, redemptive rehabilitation, rather than on primitive retribution."

2. THE AMERICAN FRIENDS SERVICE COMMITTEE (AFSC), as an expression of the Religious Society of Friends (Quakers) in America, since 1917 has been active in works of humanitarian relief and service. The AFSC has a vital interest in this litigation because of Friends' historic and continued advocacy for the rights of children and adolescents, because of our recognition of their profound potential for rehabilitation, and because of our

opposition to the taking of human life by the State.

3. THE AMERICAN JEWISH COMMITTEE (AJC) is an organization of some 50,000 members which was founded in 1906, primarily to protect the civil and religious rights of Jews. - The AJC is deeply committed to assuring liberty and justice for all Americans as the surest guarantee of the rights of all minorities. In 1972, the AJC issued a statement in opposition to the imposition of capital punishment. In July 1988, the AJC issued a statement directly related to this case: "Whatever one may think of capital punishment generally ... the notion of executing children shocks the conscience."

4. THE AMERICAN JEWISH CONGRESS is an organization of 50,000 members formed in 1918 to protect the economic, civil,

religious, and political rights of Jews in the United States. At its Biennial Convention in 1968, the American Jewish Congress adopted a resolution on capital punishment opposing its imposition based on the Congress' desire to "approach the problem of crime from both a rational and a deeply religious commitment."

5. THE CHRISTIAN CHURCH (DISCIPLES OF CHRIST) has 4,214 churches with membership of 1.1 million. The Church is especially concerned with protecting and nurturing youth. In 1973, the General Assembly, a voting representative body of the Church, approved a resolution opposing the imposition of capital punishment and instead "favoring a program of rehabilitation for criminal offenders...."

6. THE MENNONITE CENTRAL COMMITTEE (MCC), founded in 1920, is the

cooperative relief and social service agency of North American Mennonite and Brethren in Christ Churches representing 300,000 members. MCC has a long-standing concern for youth reflected in its many programs working with youth. Mennonites have also been involved in criminal justice issues, including death penalty issues, for many years, having ministered to victims and families of victims as well as to offenders. The MCC's opposition to the death penalty, which dates back to the 17th century, is based in part on its belief that "true justice is created through restitution and reconciliation, not retribution." "Statement on the Death Penalty," adopted at MCC U.S. Peace Section meeting, December 4, 1982.

7. THE GENERAL CONFERENCE MENNONITE CHURCH was formed in 1860 uniting

Mennonites interested in doing missionary work. It consists of 211 churches with a membership of 36,000. In 1965, the General Conference Mennonite Church at its triennial conference resolved to "be more faithful ... in laboring ... for the correction of spiritual, economic, and social conditions which contribute to the making of juvenile offenders...." They further adopted a position in opposition to the imposition of capital punishment, finding that execution is a "repudiation of the rehabilitative aspect of the state's own task and function ... " and "removes [the offender] forever from the realm of the church's redemptive ministry."

8. THE NATIONAL COUNCIL OF CHURCHES is a "community of communions" composed of 32 national religious bodies in the United States having an aggregate

membership of 40,000,000. The Council is governed by a Governing Board of 265 members elected by the member communions in proportion to their size and support of the Council. The Governing Board adopts policy statements and resolutions that express its views on moral and spiritual issues and govern the operation of the program units of the Council. Among these have been three statements in opposition to the death penalty, adopted in 1968, 1976, and 1979. The 1968 Policy Statement adopted unanimously, was based in part on the "Christian commitment to seek the redemption and reconciliation of the wrong-doer, which are frustrated by his execution." The Governing Board is especially concerned with adolescents and their special rehabilitative potential, as reflected in a "Resolution on Jails, Prisons and the Courts," adopted in 1972.

9. JAMES E. ANDREWS AS THE STATED CLERK OF THE GENERAL ASSEMBLY OF THE PRESBYTERIAN CHURCH (USA): As the senior continuing officer of the General Assembly, the Stated Clerk is authorized "to retain legal counsel and institute or participate in legal proceedings." The General Assembly is the highest governing body of the Church, and represents the unity of the Presbyterian Church (USA) as a national Christian denomination with 3 million members organized into more than 11 thousand congregations. Through its antecedent religious bodies, The Presbyterian Church (USA) has existed as an organized religious denomination since 1706. Participation in this brief is based upon policy decided by the General Assembly following a process which provides for study and comment throughout the denomination. In 1974, the General

Assembly of the United Presbyterian Church (USA), urged that "a major concern of the church be the needs and rights of children ... [and] development of policies which ensure their full growth and development ... including the protection of their legal and civil rights." The United Presbyterian Church (U.S.A.) General Assembly in 1977, affirmed the position of the 171st General Assembly (1959) "that as Christians we must seek redemption of evil doers and not their death, and that the use of the death penalty tends to brutalize the society that condones it," and similarly the Presbyterian Church in the United States in its statement on Capital Punishment concluded that "[t]rue human justice which reflects the justice of God ... can only seek to maintain and preserve life -- the life of those who

threaten the lives of others as well as the lives of those who are threatened."

10. THE SOUTHERN CHRISTIAN LEADERSHIP CONFERENCE is a non-profit civil rights organization founded in 1957 by Dr. Martin Luther King, Jr. and other ministers with the stated purpose of redeeming the soul of America by furthering Christian values and upholding the rights of the poor. SCLC has 90 chapters and 50,000 members across the country. Throughout the course of its history, SCLC has conducted workshops and seminars, held rallies and demonstrations and passed resolutions opposing the death penalty. SCLC holds that the death penalty is racially and economically biased and is merely a tool of oppression. Furthermore, it is the conviction of SCLC that juvenile executions are immoral, unethical and un-

Christian.

11. THE UNION OF AMERICAN HEBREW CONGREGATIONS represents 800 Reform congregations with a membership of over 1.3 million Jews in the United States. Its congregations and national affiliates have a broad range of program and policy activities in the area of children's rights grounded in a commitment to their proper care, nurture, and development. The UAHC has long been involved in issues of social and criminal justice and has for decades expressed its views in opposition to capital punishment on humanitarian, religious, moral, and human rights grounds.

12. THE UNITED CHURCH OF CHRIST COMMISSION FOR RACIAL JUSTICE of the 1.7 million member United Church of Christ was created in the early 1960s to increase the involvement of the Church in

the continuing struggle for racial justice on a national level and to help develop new policies and practices to meet the needs of racial and ethnic communities across the United States. United Church of Christ has 6,400 churches with a membership of 1.6 million. The Church is especially interested in the obligations of society to its children. In 1979, the 12th General Synod of the UCC reaffirmed the declarations of earlier Synods in opposition to the death penalty, "opposition [that] is based on our understanding of the Christian Faith and the New Testament's call to redemptive love, mercy, and sanctity of life...."

13. THE UNITED METHODIST CHURCH GENERAL BOARD OF CHURCH AND SOCIETY is an instrumentality of the United Methodist Church; its purpose is to further the

work of the church in the sphere of social affairs. The United Methodist Church has 38,000 churches with 9.2 million members. The Social Principles of the United Methodist Church are an effort by the Church to speak to human issues from a sound biblical and theological foundation. Social Principle III, The Social Community, emphasizes that "children are ... acknowledged to be full human beings in their own right, but beings to whom adults and society in general have special obligations." The 1980 General Conference reaffirmed its opposition to the imposition of capital punishment, stating, "The United Methodist Church cannot accept retribution or social vengeance as a reason for taking human life. It violates our deepest belief in God as the creator and the redeemer of humankind,"

and in 1984, further stated, "Capital punishment ... is contrary to our belief that sentences should hold within them the possibility of reconciliation and restoration."

14. THE UNITED STATES CATHOLIC CONFERENCE is a civil entity of the American Catholic Bishops assisting them in service to the Church where voluntary, collective action is needed. In 1968, the U.S. Catholic Conference Committee on Social Development and World Peace issued its statement on capital punishment, stating, "The critical question for the Christian is how we can best foster respect for life, preserve the dignity of the human person and manifest the redemptive message of Christ. We do not believe more deaths are the response to the question." In 1974, the Catholic bishops declared their opposition to

capital punishment, and that opposition was reaffirmed in 1980. The Statement of the Bishops noted that "infliction of the death penalty extinguishes possibilities for reform and rehabilitation of the person ... as well as the opportunity for the criminal to make some creative compensation for the evil he or she has done. It also cuts off the possibility for a new beginning and of moral growth in a human life which has been seriously deformed."

SUMMARY OF ARGUMENT

This Court's treatment of children has been consistent and simple -- children receive special protection in the law because they are special in society, possessing a unique character blend that combines inexperience, lack of insight, and lack of perspective, Eddings v. Oklahoma, 455 U.S. 104, 115-16 (1982),

with an amazing "capacity for growth," Thompson v. Oklahoma, ___ U.S. ___, 108 S. Ct. 2687, 2699 (1988). Children and adolescents are not miniature adults, and because of their nature, they are reprieved from adult responsibility and deprived of adult privilege. All of this the law demands, because of common sense and the teachings of the ages. These Amici believe and will show that because of these considerations, there is a societal and legal consensus that youth ought to be treated differently than adults for all punishment purposes.

These Amici are particularly well-suited to inform the Court of the evolving standards of decency in society with respect to the execution of the young. Religious organizations are heavily relied upon by society to participate in child-rearing, family

counseling, and the inculcation of moral values. Indeed, the preparation of adolescents for adulthood is one of religion's highest callings. Through this endeavor, these Amici have first-hand experience with the qualities that make the young special.

Their most compelling quality is that children are redeemable and rehabilitatable. This quality defines adolescents' daily reality, as the young literally can change overnight. While children and adolescents are not adults, they do become adults, after a difficult and turbulent passage. The capacity to change, the inclination toward majority, and the ability to be rehabilitated--these characteristics identify children as different, and provide part of the impetus for the moral consensus that rejects their execution. (Argument 1).

Nothing is gained and all is lost by extinguishing the life of a youth who commits a crime. Rehabilitation ought to be the paramount penological goal, especially with children, and in all other areas dealing with children, it is. Execution, of course, pretermits rehabilitation. Other penological goals are similarly ill-served by execution of the young. Retribution -- giving a law-breaker what he or she deserves -- is misplaced in the adolescent context. Adolescents, almost by definition, possess reduced culpability for their acts, and do not "deserve" the ultimate sanction. Deterrence is removed as a legitimate reason for execution by another defining characteristic of adolescents -- immaturity. Adolescents do not, indeed cannot, fully foresee the consequences of their actions. That is

why society does not allow them to vote, marry, or stay out late.

For these and other reasons, there is a national moral consensus against execution of the young. All members of the Court agree that at some age, execution is cruel and unusual punishment. That age should be set at 18, an age that is firmly entrenched in this society as the time of passage from childhood to adulthood, the time at which responsibilities attach and disabilities are shed. Professional organizations uniformly select age 18 as the execution limit, and legislators increasingly do so. Age 18 is perhaps the most settled line drawn in this country for separating children from adults, and its utility in other contexts counsels for its use here.

(Argument II)

These Amici reject execution as a

proper punishment in any case. It is especially horrible in the case of the young. Children are protected for reasons too basic to question, and it defies logic to protect the young from themselves and others in all but this most demanding of circumstances. Just as this Court has positioned itself between children and harm innumerable times, the moral consensus is, for the same reasons, against the execution of children. Children are redeemable, and their execution is cruelty for the sake of cruelty.

ARGUMENT

I. THERE IS A SOCIETAL MORAL CONSENSUS THAT IT IS SINGULARLY INDECENT TO EXECUTE ADOLESCENTS, WHOSE INHERENT REDEEMABILITY AND DISABLING IMMATURITY DISTINGUISH THEM FROM ADULTS

Minors "have a very special place in life," May v. Anderson, 345 U.S. 520, 536 (1953), which law reflects and respects.

Thompson v. Oklahoma, ___ U.S. ___, 108 S. Ct. 2687, 2709 (1988) (O'Connor, J., concurring) ("Legislators recognize the relative immaturity of adolescents, and we have often permitted them to define age-based classes that take account of this qualitative difference between juveniles and adults.") A "very special place" is also reserved for children in all religious communities, see Wisconsin v. Yoder, 406 U.S. 205, 232 (1972); Pierce v. Society of Sisters, 268 U.S. 510, 535 (1925), and for many of the same "policy" reasons -- minors make mistakes because of their immaturity, but they are specially redeemable. Because of "the lesser culpability of the juvenile offender, [and] the teenager's capacity for growth," Thompson, 108 S. Ct. at 2699 (plurality opinion), law -- religion's and society's -- separates children from

adults respecting both rights and responsibilities.

This common ground concerning adolescents shared by law and religion provides the religious community with an unusual opportunity and a unique duty to provide the Court with "evidence of societal standards of decency," Thompson, 108 S. Ct. at 2710 (O'Connor, J., concurring), which "mark the progress of a maturing society," Trop v. Dulles, 356 U.S. 86, 101 (1958) with respect to punishment of youthful offenders. Amici will demonstrate that "as public opinion [has] become[] enlightened by a humane justice," Weems v. United States, 217 U.S. 349, 374 (1910), a moral consensus has emerged that recognizes that the execution of an individual who committed an offense when he or she was under eighteen years old is indefensible.

Because children and adolescents have great potential for growth, maturation, and thus redemption, their execution is nothing short of "the gratuitous infliction of suffering," Gregg v. Georgia, 428 U.S. 153, 183 (1976) (opinion of Stewart, Powell, and Stevens, JJ.), which is not to be tolerated by any, much less an enlightened, society.

A. Amici Are Well Suited To Provide Indicators of Contemporary Standards Of Decency, Especially with Respect To Juvenile Executions.

1. Religious Groups Are Traditionally Relied Upon by Framers of Public Policy.

The religious community traditionally has played a pervasive and dominant role in the formation of the American social conscience. Churches and synagogues have insistentlly and persuasively called not only upon their own people but also upon all citizens to

form a more just and humane society.³ Not content merely to reflect the mores and prejudices of the imperfect human community, religious leaders -- both clergy and lay -- have represented, articulated, and reflected the impulse of the human spirit towards justice, compassion, and correct conduct.⁴ The religious community routinely enlivens and enlightens public debate on matters presenting basic issues in American society. Indeed, since the earliest times, religion has been "woven into the

³ Joseph Cardinal Bernardin, Archbishop of Chicago, in a recent presentation before the American Bar Association, noted that "the purpose of the separation of church and state in American society is not to exclude the voice of religion from public debate, but to provide a context of religious freedom where the insights of each religious tradition can be set forth and tested.... To ignore the moral dimension of policy is to forsake our religious heritage." Bernardin, "The Role of the Religious Leader in the Formation of Public Policy," 34 DePaul L. Rev. 1, 5 (1984).

⁴ Id. at 1.

underlying texture of American politics." A.J. Reichley, Religion in American Public Life 169 (Washington, D.C.: Brookings Institute, 1985).⁵

Religion's stewardship of moral values has led to new definitions of what is right and wrong in public policy, flowing from insights voiced by emerging religious movements.⁶ Social reforms in

⁵ "From the standpoint of the public good, the most important service churches offer to secular life in a free society is to nurture moral values that help humanize capitalism and give direction to democracy. Up to a point, participation by the churches in the formation of public policy, particularly on issues with clear moral content, probably strengthens their ability to perform this nurturing function." A.J. Reichley, Religion in American Public Life 359 (Washington, D.C.: Brookings Institute, 1985).

⁶ For example, the Protestant Reformation recast the role of the individual in society, the virtue of non-ecclesiastical occupations, and the right of all persons to search the Scripture for themselves, leading to common public education — the first public schools were in Germany at the behest of Martin Luther. Tsaroff, Radoslav A., The Moral Ideals of Our Civilizations 118 (N.Y.: E.P. Dutton, 1942).

The Wesleyan/Evangelical Revival in Britain

Great Britain in the nineteenth century were brought about because the evangelical impulse, stemming from John Wesley and George Whitefield and their followers, and similarly influential leaders in other religious groups, raised the level of what human beings understood they could and should expect of each

in the 18th century reshaped the social and political structures through legal reforms brought about by evangelical influence. Elie Halévy, A History of the English People in the Nineteenth Century 399-400 (N.Y.: Peter Smith, 1949), quoted in Winthrop Hudson, The Great Tradition of the American Churches 102 (N.Y.: Harper and Bros., 1953). This same evangelical impulse fueled the growing opposition to slavery in Britain and cast opprobrium on the system of transportation of convicts to Australia. Robert Hughes, The Fatal Shore 162, 282 (N.Y.: Alfred A. Knopf, 1987).

Religiously inspired movements have been instrumental in many social reforms in the United States. "[C]hurch and religious groups in the United States have long exerted powerful political pressures on state and national legislatures, on subjects as diverse as slavery, war, gambling, drinking, prostitution, marriage, and education." McDaniel v. Paty, 435 U.S. 618, 641 n.25 (1978) (Brennan, J. concurring) (quoting L. Tribe, American Constitutional Law, 1st ed., 866-67).

other. In short, the religious community frequently speaks to policy-makers about evolving standards of decency, policy-makers listen, and public policy changes.

2. Amici Are Especially Well-Suited To Address Society's Commitment To Reserve A Special Place For Juveniles Under The Law.

The central issue presented by the instant cases is also a matter of great social and religious importance -- whether there is a societal consensus that it is morally, and thus constitutionally, offensive to execute adolescents. As this Court has insisted, that inquiry must be determined by reference to the "evolving standards of decency that mark the progress of a maturing society." Trop v. Dulles, 365 U.S. at 101. The identifying standard

should not be, or appear to be, merely the subjective views of

individual justices; judgment should be informed by objective factors to the maximum possible extent. To this end, attention must be given to public attitudes concerning a particular sentence...."

Coker v. Georgia, 433 U.S. 584, 592 (1977). These Amici -- religious judicatories, organizations, and agencies of major Protestant, Catholic, and Jewish denominations in the United States -- are, as in other areas of public policy, in a unique and important position to reflect public attitudes concerning the execution of the young.⁷

⁷ In the twentieth century, the policy statements of religious bodies in the United States and Europe have come to represent the product of a significant and highly developed process that brings together biblical/theological/ social science expertise with representative deliberations. The policy statements generally are the result of a long and careful process of study in which experts from theological, ethical and various technical fields, meeting over a period of years with program specialists in the denominations, research a given problem-area, prepare analyses, and draft proposed policies for the religious body. The result of this process is a well-considered and definitive statement

combining the contributions of experts and the scrutiny and discussion of a widely-representative deliberative process. As such, it represents a deliberate and informed consensus.

Through such deliberative processes, before the end of the last decade, a large majority of religious bodies or organizations in the United States had expressed their opposition to the imposition of capital punishment in the United States. These include:

- American Baptist Church in the U.S.A. (1977)
- American Ethical Union (1976)
- American Jewish Committee (1972)
- American Lutheran Church (1972)
- American Friends Service Committee (1976)
- Christian Church (Disciples of Christ) (1973)
- Christian Reformed Church (1979)
- Church of the Brethren (1979)
- Episcopal Church (1979)
- Friends Committee on National Legislation (1977)
- Lutheran Church in America (1966)
- Mennonite Church (1965)
- National Council of Churches in the U.S.A. (1976)
- Presbyterian Church in the United States
- Reformed Church in America (1965)
- Synagogue Council of America (1971)
- Unitarian Universalist Association (1979)
- United Church of Christ (1979)
- United Methodist Church (1980)
- United Presbyterian Church in the U.S.A. (1977)
- United States Catholic Conference (1978)

"Capital Punishment: What the Religious Community Says" (N.Y.: National Interreligious Task Force on Criminal Justice, Work Group on the Death

Law and society provide special, that is, different, treatment to minors because minors are more rehabilitatable and redeemable than adults. The history of the juvenile justice system in this country reveals that this special treatment for juveniles was prompted, and has been sustained, by the efforts of religious leaders.⁸ The juvenile justice

Penalty, 1978). The Union of American Hebrew Congregations in 1959 took a position opposing the imposition of capital punishment, and in November 1980, the United States Catholic Conference also issued a statement in opposition to capital punishment.

Amici voice their special objections to execution of adolescents and children, objections separate and apart from those voiced to executions in general. While Amici oppose capital punishment in general, we find execution of the young even more abhorrent.

⁸ In both the Old and New Testament, children are treated differently because they are children. The tradition continues. See, e.g., Criminal Justice, The General Board of Church and Society, the United Methodist Church 14 ("The Social Principles of the United Methodist Church call for special attention to the rights of children and youth."); "Political Responsibility: Choices for the 1980s," A Statement of the

system can be traced to two major reforms which occurred during the nineteenth century:

The opening of the New York House of Refuge has been denominated "the first great event in child welfare" in the period before the Civil War. The second reform, probably the better known of the two, was the institution of the juvenile court by the Illinois legislature in 1899.

Fox, S., "Juvenile Justice Reform: An Historical Perspective," 22 Stan. L. Rev. 1107 (1970). The House of Refuge -- which "offer[ed] food, shelter, and education to the homeless and destitute youth of New York, and ... remov[ed] juvenile offenders from the prison company of adult convicts" -- was a project of "Quaker reformers who had gained prominence through earlier works

Administrative Board, United States Catholic Conference, March 22, 1984, 13.

of charity and reform." Id. at 1188-89.⁹ The courts soon followed this religiously inspired movement, adopted "the philanthropic protestations of the reformers," id. at 1204, and the juvenile court system was born. See Kent v. United States, 303 U.S. 541, 554-55 (1966) ("The objectives [of the juvenile

⁹ "Can it be consistent with real justice, that delinquents of this character, should be consigned to the infamy and severity of punishments, which must inevitably tend to perfect the work of degradation, to sink them still deeper in corruption, to deprive them of their remaining sensibility to the shame of exposure, and establish them in all hardihood of daring and desperate villainy? Is it possible that a Christian community can lend its sanction to such a process without any effort to rescue and save?" Society for the Prevention of Pauperism in the City of New York, Report on the Subject of Erecting a House of Refuge for Vagrant and Depraved Young People, reprinted in Society for the Reformation of Juvenile Delinquents, Documents Relative to the House of Refuge 13 (N. Hart ed. 1832) (emphasis added). The House of Refuge was "to effect the moral reformation of delinquents," id. at 11-12, because "[r]eformation is, or ought to be, an object dear to every man who votes for a penal statute. In the cause of the young it is almost everything...." Id. at 33.

court] are to provide resources of guidance and rehabilitation....") Every state now has a juvenile court act, *id.* at 554 n.19, and this Court has acknowledged the religious "child savers"¹⁰ who prompted the reform.¹¹

In a very real sense, then, this juvenile protection movement, begun and influenced by some of the Amici here (or

¹⁰ Comment, "Capital Punishment for Minors: An Eighth Amendment Analysis," 74 J. Crim. L. & Criminology 1470, 1474 (1983).

¹¹

"[The reformers] were profoundly convinced that a society's duty to the child could not be confined to the concept of justice alone. They believed that society's role was not to ascertain whether the child was 'guilty' or 'innocent' but 'what is he, how has he become what he is, and what had best to be done in his interest and in the state's to save him from a downward career.' The child essentially good, as they saw it, was to be made to feel that he is the object of [the state's] care and solicitude...."

In re Gault, 387 U.S. 115 (1967). All juvenile court systems have rehabilitation as their goal. Paulsan, Fairness to the Juvenile Offender, 41 Minn. L. Rev. 547 (1957).

other religious bodies within their traditions), is responsible for the issue now before the Court. Juveniles have fewer rights but greater protection than adults because the religious community, and thence the legal community, recognized and protected that all-defining characteristic of the young -- their ability to reform, mature, be rehabilitated; in short, their "capacity for growth." Thompson, 108 S. Ct. at 2699. The common religious/legal tenet that lends Amici their special voice in the instant debate arises from the doctrinal cross-currents between modern juvenile law and religion. Rehabilitation and redeemability¹² are virtually

¹² "The Christian concern is redemptive." John Howard Yoder, "The Death Penalty: A Christian Perspective," in Capital Punishment Study Guide 14 (Winnipeg, Manitoba: Victim Offender Ministries, Mennonite Central Committee Canada, 1980, repr. 1985). In Jewish thought, this concept is understood as "Teshuvah," which

synonymous in the juvenile context, and adolescents, more than any other group, possess this religious, cultural, behavioral, and legal characteristic.¹³

B. Execution of Persons Who Were Minors At The Time Of The Commission Of The Offense Violates Contemporary Standards Of Decency -- Youth Are Different.

This nation has manifested a great

embodies the notion that everyone is capable of making atonement for mistakes and creating a better future. The Jewish High Holy Day of Yom Kippur is an annual day of atonement, a day in which to make atonement for the mistakes of the past year, receive forgiveness from God, and begin again.

¹³ Because of this very special potential for redemption and rehabilitation, young people must not be executed. As will be shown, "children are constantly maturing," Feld, "Juvenile Court Legislative Reform and the Serious Offender: Dismantling the 'Rehabilitative Ideal'," 15 Minn. L. Rev. 167, 231 (1981), and "where there is a glimmer of hope for repentance and rehabilitation, Christians [and society] should oppose capital punishment as a legalistic retribution," Sub-Committee of Public Affairs Committee of Ontario and Quebec; see also Volume II, Pastoral Letters of the United States Catholic Bishops, Statement on Capital Punishment, 427, 429 (1980) ("Punishment must be determined with a view ... to the reformation of the criminal and his reintegration into society....").

and growing concern for the care and nurture of children, and has enforced that concern through law. Systems of education, nutrition and housing, prohibitions against and limitations on child labor, prohibitions of and punishment for abuse and neglect of children, and so on, deal with and reflect the maturing commitment of American society to the care of children, not just for the children's sake but for the sake of the country. Children are protected because they grow up. Laws and institutions governing juvenile justice similarly reflect an evolving and maturing commitment to the goals of rehabilitation and reconciliation of children. Thompson, 108 S. Ct. 2687 (1988) (plurality opinion). The social concern for the welfare of children includes systematic legal restrictions on

the ability of young people fully to participate in society as adults. This system of enforced child dependence on adult society not only tolerates the less responsible acts of children, but also requires that adults take legal and moral responsibility for actions of young people until such time as the young can fully appreciate those actions. See, e.g., Parham v. J.R., 442 U.S. 584 (1979).

The experience and considered judgment of these Amici is that the execution of the young fundamentally abrogates society's chosen responsibility to restore and reconcile its children, and gratuitously bypasses a unique opportunity for rehabilitation. Executions of the young are opposed, for these and other reasons, by persons primarily charged with the care and

development of young people.¹⁴ Because youth are different, juvenile court judges,¹⁵ religious leaders, medical, psychological, and psychiatric experts,¹⁶

¹⁴ It further counsels against child executions when it is understood that, in addition to children's inherent immaturity and capacity for rehabilitation, homicidal adolescents, more so than other adolescents, "must cope with brain dysfunction, cognitive limitations, and severe psychopathology. Moreover, they must function in families that are not merely unsupportive but violent and brutally abusive," Thompson, 108 S.Ct. at 2699 n.42, quoting Lewis, Pincus, Bard, Richardson, Pritchep, Feldman & Yeager, Neuropsychiatric, Psychoeducational, and Family Characteristics of 14 Juveniles Condemned to Death in the United States 11 (1987). Society's obligation is to all children, and juvenile crime represents "a failure of family, school, and the social system, which share responsibility for the development of American youth," Twentieth Century Fund Task Force on Sentencing Policy Toward Young Offenders, Confronting Youth Crime 7 (1978).

¹⁵ On July 14, 1988, the National Council of Juvenile and Family Court Judges adopted the following Resolution: "BE IT RESOLVED that the National Council of Juvenile and Family Court Judges is opposed to capital punishment for those who committed an offense while under the age of eighteen years."

¹⁶ See Brief of American Society for Adolescent Psychiatry and the American Orthopsychiatric Association as Amici Curiae in

child welfare workers and advocates,¹⁷ professional educators, scholars and practitioners in juvenile criminal law, and increasingly, legislators believe that execution of the young is gratuitous and excessive punishment.¹⁸

The settled empirical and objective data and experience which has led to this widespread rejection of child executions point to at least two important differences between children and adults, either or both of which makes execution of the young unacceptable. First, an adolescent is not a little adult:

The feebleness of infancy demands a continual protection. Everything must be done for an imperfect being, which as yet does nothing for itself. The complete development of

Support of Petitioner, in Thompson.

¹⁷ See Brief of Child Welfare League of America, et al., as Amici Curiae in Support of Petitioner in Thompson.

¹⁸ See n.29, infra.

its physical powers takes many years; that of its intellectual faculties is still slower. At a certain age, it has already strength and passions, without experience enough to regulate them.

Jeremy Bentham, *Theory of Legislation* (Boston: Weeks, Jordan, 1840, Vol. I, p. 248); see also Thompson, 108 S. Ct. at 2693 n.23 (plurality opinion). "Particularly 'during the formative years of childhood and adolescence, minors often lack the experience, perspective, and judgment expected of adults.'" Eddings v. Oklahoma, 455 U.S. 104, 115-16 (1982), quoting Bellotti v. Baird, 443 U.S. 622, 635 (1979).¹⁹ This view is confirmed by a vast body of clinical

¹⁹ This first factor -- diminished culpability -- will not be further discussed here, but will become more important in Argument II, infra, to demonstrate that none of the traditional theories supporting the death penalty apply to persons with reduced culpability.

research and literature.²⁰

Second, even though adolescents are not little adults, they nevertheless have the resilient capacity to grow -- intellectually, emotionally, and spiritually -- into adults, notwithstanding setbacks along that route. The young must learn, and they do, but the learning often comes by making, and correcting, mistakes. The "possibility for reform and rehabilitation," Statement Issued by the United States Catholic Bishops, supra, p. 431, defines the standard of decency which guides our dealings with law-breakers. Unlike any other group of individuals, children grow up, and the reality of that maturation process warrants lesser punishment for

²⁰ See Brief of the American Society for Adolescent Psychiatry and the American Orthopsychiatric Association as Amici Curiae in Support of Petitioner, p. 4, in Thompson.

children than for adults.²¹

Certainly, the experience of these Amici is that children and adolescents are redeemable. In that way, they are truly special, and countless testimonials could be provided to demonstrate to the Court that religious organizations and institutions are successful at working with troubled adolescents and in helping them return to the path of proper citizenship.²² The experience of other

²¹ For this reason, even when a decision has been made to try a juvenile in adult court, full adult penalties are not necessarily appropriate. Trial of a juvenile in adult court, whether by legislative, judicial, or prosecutorial waiver, rarely involves a determination of the minor's maturity. Note, "The Decency of Capital Punishment for Minors: Contemporary Standards and the Dignity of Juveniles," 61 Ind. L.J. 757, 771 n.81 (1986).

²² Such testimonials are not necessary -- this Court has long recognized that the process through which children become adults is one that must involve these Amici, and parents, whose responsibility it is to prepare children for "additional obligations." Pierce v. Society of Sisters, 268 U.S. at 535. "The duty to prepare the child for 'additional obligations'... must be

amici, whose function it is to enter the maturation process when family/religion have not been enough, reinforces our belief from our experience that adolescents are specially redeemable and rehabilitatable.

First, as a matter of developmental psychology, children are redeemable. Adolescence, according to mental health experts, is a turbulent time. See Brief of the American Society for Adolescent Psychiatry and the American Orthopsychiatric Association as Amici Curiae in Support of Petitioner in Thompson. Adolescents are by nature capable of significant and spontaneous change. Id. at 7. Consequently, "incorrigibility is inconsistent with

read to include the inculcation of moral standards, religious beliefs, and elements of good citizenship." Wisconsin v. Yoder, 406 U.S. at 233.

youth ... it is impossible to make a judgment that a fourteen-year-old youth, no matter how bad, will remain incorrigible for the rest of his life." Workman v. Commonwealth, 429 S.W. 2d 374, 378 (Ky. 1968). Cognitive skills -- on which culpability must rest -- develop continuously. Greater tolerance respecting youthful offenders is justified by reason of their heightened capacity for behavior modification, according to mental health experts. Brief of the American Society for Adolescent Psychiatry and the American Orthopsychiatric Association as Amici Curiae, supra, at 28. Adolescents are more responsive than adults to rehabilitative treatment, due to the fact that they are still going through the maturation process. Id.

Second, the practical experience of

workers with juveniles teaches that children are rehabilitated. Social workers, youth counselors, juvenile court caseworkers, and others all intimately familiar with youthful offenders agree -- redemption works with children and adolescents. Social scientific literature is replete with evidence that even the most violent adolescents are capable of dramatic change and rehabilitation. For example, a two-year follow-up study of homicide offenders paroled from the California Youth Authority (CYA) in 1984 showed that 76.7% of these offenders successfully completed their period of parole, while CYA parolees who had been convicted of non-homicide offenses had a parole success rate of only 41.9%. California Youth Authority, Offender-Based Institutional Tracking System (1987). A

study of chronic and violent juvenile offenders in Ohio similarly found that approximately 60% of youths who were charged with murder in juvenile court were not subsequently even re-arrested as adults. D. Hamparian, R. Schuster, S. Dinitz & J. Conrad, The Violent Few (1977).²³ Observers and caseworkers have repeatedly found that adolescents can be taught to conform to society's norms, precisely because juvenile crimes grow out of the "[a]dolescent's ... vulnerab[ility], ... impulsivi[ty], and ... lack of self-discipline[]." Twentieth Century Fund Task Force on Sentencing Policy Toward Young Offenders, Confronting Youth Crime 7 (1978), (quoted

²³ Research has long shown that as people get older, their propensity to commit crime decreases, so that by the time they reach their early twenties, they commit fewer offenses. Note, "The Decency of Capital Punishment for Minors: Contemporary Standards and the Dignity of Juveniles," 61 Ind. L.J. 757, 786 n.174 (1986).

in Eddings v. Oklahoma, 455 U.S. at 115 n.11).

Thus, it is our experience and the experience of other professionals with whom we often work, and from whom we learn, that children are different in a way that requires a legal distinction. Children by their nature are not hopeless, incorrigible, and unredeemable. They are the very embodiment of our hope for humankind because of their proven ability to be and do better, to contribute and to succeed, and to amaze and encourage us with the power of the human spirit. Such potential should not be extinguished, and these Amici believe that the "'evolving standards of decency' of our society," Thompson, 108 S. Ct. at 2719 (dissenting opinion), require that children be recognized as different for death penalty purposes.

II. THE EXECUTION OF AN INDIVIDUAL WHO WAS UNDER EIGHTEEN YEARS OF AGE AT THE TIME OF THE OFFENSE IS CRUEL AND UNUSUAL PUNISHMENT IN VIOLATION OF THE EIGHTH AND FOURTEENTH AMENDMENTS

Some four-year-olds have the maturity of a two-year-old, some have the maturity of a six-year-old. Some eighteen-year-olds have the maturity of a fifteen-year-old, some fifteen-year-olds have the maturity of an eighteen-year-old. Legal adulthood in this country is a function not of maturity but of age. Thus the immature eighteen-year-old may fight a war and vote, while the mature fifteen-year-old is exempted from such duties and pines for such privileges.

This line-drawing is arbitrary in the same sense that all societal decisions are arbitrary, based as they are on decades and centuries of tradition, and interwoven as they must be with inarticulable premises and seemingly

a priori conclusions. Despite this characteristic, line-drawing reflects, or creates, this society's standard of decency in some areas, and the line is drawn at a point which most can agree is "right." There is no "logic" which proves that no person is mature enough until age 18 (or 21) to drink alcohol, and no "logic" which proves that no one under 16 has the maturity to drive an automobile. But these are rules our society imposes on our children, and these are the rules under which they are forced or allowed to operate, notwithstanding their varying degrees of intellectual, social, religious, moral, and political development.

And so it is when the Court decides to draw a line on the death penalty. Thompson, 108 S. Ct. at 2706 ("The plurality and the dissent agree on two

fundamental propositions: that there is some age below which a juvenile criminal can never be constitutionally punished by death, and that our precedents require us to locate this age....") (O'Connor, J., concurring). The line selected will have its arbitrary aspects.²⁴ Its point, however, will be determined by what this society intuitively knows, as reflected in other drawn lines, and it will be drawn according to what is the accepted standard of decency in this society. While these Amici believe that execution is wrong for anyone, it is especially wrong for adolescents, and if this Court is to choose an age below which

²⁴ Legal classifications of children as children almost never allow a child to assume the rights and privileges of adulthood prematurely -- even upon a showing of exceptional maturity. Where they do so allow, ironically, a history of violent juvenile criminal behavior would ipso facto preclude a finding of exceptional maturity, and would bar the child's assumption of adult status.

executions will be barred, society has already paved the way. Age 18 is the most clearly defined, the most heavily relied upon and assumption-filled age line in this country, and perhaps in the world. Eighteen is not only the line for adulthood, but it is also the line increasingly chosen by legislators for the allowance of executions. The experience of these Amici is that in other spheres and for other purposes, age 18 -- while somewhat arbitrary -- by and large works, and that it indeed reflects society's notion of what is properly understood as the time for passage into adulthood. For Eighth Amendment purposes, as for so many other purposes, age 18 works, and the execution of one who was under 18 at the time of the offense is cruel and unusual punishment.

A. Executing Minors Is The Gratuitous Imposition Of Suffering, And Offends The Standards Of Decency Expected In An Enlightened Society.

This Court has concluded that there are certain societal benefits from executions. Even if true, and even if those benefits are so weighty that they justify taking life -- adult life -- conclusions with which Amici strongly disagree, the purported justifications for execution ring especially hollow when applied to children. Children are different from adults. Nothing good accompanies executing them.

Minors have two distinct characteristics: immaturity and the ability to grow.²⁵ Unless it is to be "nothing more than the purposeless and needless imposition of pain and

²⁵ Minors who are on death row have significantly more characteristics in common: organic brain damage, neuropsychological damage, and a history of being abused. See n.14, supra.

suffering," Coker v. Georgia, 433 U.S. at 592, executions must serve some legitimate social purpose. "The death penalty is said to serve two principal social purposes: retribution and deterrence of capital crimes by prospective offenders." Gregg v. Georgia, 428 U.S. at 183 (opinion of Stewart, Powell, and Stevens, JJ.). Neither goal is furthered by execution of adolescents. ABA Juvenile Death Penalty Report 8-9 (Those justifications "lose much of their persuasiveness when applied to an adolescent's case.").

Retribution has as its benchmark "that punishment should be directly related to the personal culpability of the criminal defendant." California v. Brown, 479 U.S. 538, ___, 107 S. Ct. 837, 841 (1987) (O'Connor, J., concurring). Thus, persons who are insane at the time

of a crime go unpunished, persons with diminished capacity are convicted of crimes carrying less severe penalties, and unintentional criminal acts are less blameworthy and punished less than intentional acts. Even an adult who kills may not be executed if the killing was unintentional. Enmund v. Florida, 458 U.S. 782, 797 (1982). "Given the lesser culpability of the juvenile offender, the teenager's capacity for growth, and society's fiduciary obligation to its children," Thompson, 108 S. Ct. at 2699 (plurality opinion), retribution is incongruous in connection with imposition of the death penalty on children. Society can feel little revenge by executing a person who has minimal responsibility, because one with lower responsibility does not deserve the greatest punishment. For the same

reasons, deterrence is inapplicable. "The likelihood that the teenage offender has made the kind of cost-benefit analysis that attaches any weight to the possibility of execution is so remote as to be virtually non-existent." Id. at 2700.

Punishment should not just do something bad for an offender, but should also do something good for society. No good comes from executing children. It is self-evident that execution is antithetical to society's stated goals for and commitment to youth -- rehabilitation. The difference between an adult and a child is "responsibility." Children are not treated as being fully responsible. Society assumes responsibility for children. It adds the ultimate insult to injury for society to fail in its responsibility to a child,

and then to hold the child responsible for the failure by executing him or her. Society's mistakes should be corrected, not eradicated, and with adolescents, more than with any others, correction has the highest potential.

B. Objective Indicia Support Age 18 As The Age For Adult Responsibility.

The cruel and unusual punishment clause of the Eighth Amendment prohibits punishments that violate "the evolving standards of decency that mark the progress of a maturing society," Trop v. Dulles, 356 U.S. at 101, as those standards are objectified by such indicia as legislation and actual jury verdicts, and as they have been expressed by respected professional organizations. Thompson, 108 S. Ct. at 2691-92 (plurality opinion). All three of these sources have agreed with these Amici, have recognized the "societal standard of

decency" that execution of adolescents is cruel and unusual punishment, and have decided that age 18 is, or ought to be, controlling.

For example, there is no death penalty in juvenile court. This legislative reality speaks volumes. Even louder, however, is the proclamation from juvenile court judges, the very persons with the most direct contact with persons under 18 years of age who commit criminal offenses, and with the most experience in how juveniles can and should be sentenced. Juvenile court judges publicly and formally oppose executions of persons under 18 at the time of the offense.²⁶ Others in the legal community concur. The American Bar Association, the American Law Institute's Model Penal Code, and the National Commission on

²⁶ See n.15, supra.

Reform of Federal Criminal Laws all take the position that eighteen years is the minimum age for execution eligibility.²⁷ In addition, in Thompson, no fewer than twenty-five professional organizations filed or joined in amici briefs opposing juvenile executions, with age eighteen being the only cut-off mark suggested.

Legislators uniformly choose age 18 as the point at which major disabilities are shed and massive responsibilities are assumed. Such legislative fiat is widely accepted. New Jersey v. T.L.O., 469 U.S. 325 (1985) (Powell, J., concurring); New York v. Ferber, 458 U.S. 747 (1982). In most states and for most purposes, a "minor" means one below 18, and a minor

²⁷ See American Bar Association Report 410, 117A, approved August 1983; American Law Institute, Model Penal Code §210.6(1)(d) (Proposed Official Draft 1962); and National Commission on Reform of Federal Criminal Laws, Final Report of the New Federal Code §3603 (1971).

has severely restricted rights and privileges. A person who is one day shy of 18 cannot vote or contract; nor can they, without permission, marry, get a driver's license, or stay out late.²⁸ In addition, age 18 is the chosen maximum age for juvenile court jurisdiction in thirty-seven states and the District of Columbia. See National Institute for Juvenile Justice and Delinquency, Major Issues in Juvenile Justice Information and Training, Youths in Adult Courts: Beyond Two Worlds 44, 86 n.2 (1982). Legislation specifically on the death penalty also chooses eighteen.²⁹

²⁸ Other disabilities of those below the age of 18 are described in the brief of the National Legal Aid and Defender Association, et al., in Thompson.

²⁹ The recently enacted federal death penalty legislation -- and its predecessor bills -- provides that a sentence of death may not be imposed upon a person who was less than 18 years old at the time of the offense. 134 Cong. Rec. S7579-S7580 (June 10, 1988). Fourteen states and

Finally, this Court looks to the actions of jurors as an indication of standards of decency. The actions of jurors also

the District of Columbia have rejected capital punishment completely. Of the 36 states retaining the death penalty, 19 set no minimum age. Thompson, 108 S.Ct. at 2694-95.

It can hardly be said that the states with no minimum age have consciously sanctioned execution of one under 18, for there is no evidence that these states "realize[d] that [their] ... actions would have the effect of rendering (minors under the age of 18) death-eligible or ... [gave] the question the serious consideration what would have been reflected in the explicit choice of some minimum age for death-eligibility." Thompson, 108 S. Ct. at 2711 (O'Connor, J., concurring).

Eighteen states expressly exclude youths under age 16, 17, or 18 in their death penalty statutes. Of these eighteen states, twelve states establish a minimum age of 18. The trend is 18. Seven of the 12 states with an age 18 minimum selected that age limit within the past seven years. Ohio in 1981 set 18 as its minimum age for execution; Nebraska did so in 1982; Tennessee did so in 1984; Colorado and Oregon did so in 1985; New Jersey did so in 1986. See Ohio Rev. Code Ann. §2929.02(A) (Page 1984); Tenn. Code Ann. §§37-1-102(3), 4:37-1-103, and 37-1-134(a)(1) (Repl. 1984); Neb. Rev. Stat. §28-105.01 (1985); Colo. Rev. Stat. §16-11-103 (1986); Or. Rev. Stat. §161-620 (1985); N.J. Stat. Ann. §2C:11-3f (West 1986) (L. 1985, ch. 478, §1, approved Jan. 17, 1986).

reflect a repugnance to the execution of juveniles.³⁰

C. Age 18 Is Inextricably Interwoven in the Fabric of Morality Entertained by This Society.

A society's moral judgment is as solidly reflected by its religious experience as by the opinions of "professionals," or the actions of legislatures or jurors. These Amici daily gauge "the evolving standards ... entertained by the society," Thompson, 108 S.Ct at 2719 (Scalia, J., dissenting,) and those standards soundly reject executing adolescents. The objective fact is that society recoils at the thought of executing a person who committed a crime as a minor, and the

³⁰ In 1983, 38 of the persons on death row were under 18 at the time of their crime. In 1986, the number had dropped to 32, but the adult death row population had increased by 500. Streib, The Eighth Amendment and Capital Punishment of Juveniles, 34 Cleve. L. Rev. 363, 384 (1987).

inescapable societal consensus is that a minor is a person under 18 years of age. If the jurisprudence of the death penalty truly turns on the conscience of our citizens, this Court must draw the line for execution at age 18, as it has been drawn throughout the stratum of decisions concerning youth.

CONCLUSION

For the foregoing reasons, the judgments below should be reversed.

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